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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Quality Trans Parts Inc.

Serial No. 76515615

Michael I. Kroll for Quality Trans Parts Inc.

Monique C. Miller, Trademark Examining Attorney, Law Office
108 (Andrew Lawrence, Managing Attorney).

Before Quinn, Grendel and Rogers, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark QUALITY (in standard character form) for goods
identified in the application as "motor vehicle parts,
namely, transmissions."¹ The Trademark Examining Attorney
has issued final refusals of registration on two grounds,
i.e., mere descriptiveness under Trademark Act Section

¹ Serial No. 76515615, filed on May 20, 2003. The application is
based on use in commerce under Trademark Act Section 1(a), 15
U.S.C. §1051(a), and June 1996 is alleged to be the date of first
use anywhere and the date of first use in commerce.

2(e)(1), 15 U.S.C. 1052(e)(1), and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant has appealed the final refusals. The appeal is fully briefed. For the reasons discussed below, we affirm the mere descriptiveness refusal, but we reverse the likelihood of confusion refusal.

We turn first to the Trademark Examining Attorney's mere descriptiveness refusal under Trademark Act Section 2(e)(1). A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of an applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the identified goods or

services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

It is settled that laudatory terms generally are deemed to be merely descriptive and therefore unregistrable on the Principal Register. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001); *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d

1056 (Fed. Cir. 1999). We find that applicant's mark, QUALITY, is a merely descriptive laudatory term.

The Trademark Examining Attorney has made of record the following pertinent definitions of "quality" from the Merriam-Webster OnLine Dictionary. When used as a noun, the word means "degree of excellence" and "superiority in kind." When used as an adjective, the word means "being of high quality." We also take judicial notice² that Webster's Ninth New Collegiate Dictionary defines "quality," in pertinent part, as follows. When used as noun, the word means "a degree of excellence : GRADE <the ~ of competing air service>, and "superiority in kind <merchandise of ~>. When used as an adjective, the word means "being of high quality."

We find that these dictionary definitions (and examples of usage) leave no doubt that the word "quality" would be perceived by purchasers as being nothing but a laudatory term as applied to applicant's goods.³ We are not persuaded by applicant's arguments to the contrary.

² The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

³ Attached to applicant's reply brief are printouts of third-party registrations in which the term "quality" appears without a disclaimer or other indication that it has been found by the Office to be merely descriptive. Apart from the fact that this

We turn next to the likelihood of confusion refusal. The Trademark Examining Attorney contends that applicant's mark, QUALITY, for goods identified as motor vehicle parts, namely, transmissions, so resembles the mark QUALITEE, previously registered on the Supplemental Register (in standard character form) for goods identified as "automotive parts; namely, disc brake pads, brake shoes, brake discs, brake drums, air filters, oil filters, fuel filters, clutches, brake wheel cylinders, brake master cylinders, clutch hydraulic cylinders, timing belts, water pumps, starters,"⁴ as to be likely to cause confusion, to cause mistake or to deceive. Trademark Act Section 2(d).

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

Applicant argues that in Section 2(d) cases in which

submission is untimely, see Trademark Rule 2.142(d), 37 C.F.R. §2.142(d), the fact that these third-party registrations exist is not controlling. See *In re Nett Designs Inc.*, *supra*.

⁴ Reg. No. 1735845, issued December 3, 1985; Affidavits under Sections 8 and 15 accepted and acknowledged; renewed.

the registration cited as a Section 2(d) bar is a Supplemental Register registration, the standard for determining whether likelihood of confusion exists is different than the standard which is used in cases where the cited registration is a Principal Register registration, i.e., the standard incorporating the *du Pont* analysis. More specifically, applicant argues that when the cited registration is a Supplemental Register registration, it may be cited as a Section 2(d) bar to an application for registration on the Principal Register only if the marks and goods at issue are "substantially identical."

The Board rejected this very argument in *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1533 (TTAB 1994), and we reject it in this case as well. See *In re The Clorox Co.*, 578 F.2d 305, 198 USPQ 337 (CCPA 1978)(same likelihood of confusion standard applies whether cited registration is on Principal or Supplemental Register). See also *In re Research and Trading Corp.*, 793 F.2d. 1276, 230 USPQ 49 (Fed. Cir. 1986), in which the cited registration was on the Supplemental Register and in which the court undertook an analysis of all relevant *du Pont* factors. Regarding the case of *In re Central Soya Company, Inc.*, 220 USPQ 914 (TTAB 1984), upon which applicant relies in this case, see

the Board's discussion in *In re Southern Belle Frozen Foods Inc.*, 48 USPQ2d 1849, 1851-52 at n.2 (TTAB 1998). As for applicant's reliance on Professor McCarthy's discussion (at 3 McCarthy on Trademarks and Unfair Competition §19:37 (4th ed.)) of whether a "non-mark" registered on the Supplemental Register should be allowed to prevent registration of a "real mark" on the Principal Register, the court has responded to that argument by noting: "that result is supported by the plain terms of the statute." *Towers v. Advent Software Inc.*, 913 F.2d 942, 946 n.2, 16 USPQ2d 1039, 1042 n.2 (Fed. Cir. 1990).

Thus, we have undertaken the normal *du Pont* likelihood of confusion analysis, but nonetheless have kept in mind the well-settled principle that the more descriptive and weak the cited registered mark is, the lesser the scope of protection to which it is entitled. See *In re The Clorox Co.*, *supra*.

Under the first *du Pont* factor, we must determine whether applicant's mark, QUALITY, and the cited registered mark, QUALITEE, are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently

similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

The cited registered mark is merely a somewhat novel spelling of the word "quality," which makes up the whole of applicant's mark. Notwithstanding the difference in spelling, we find that the two marks are identical in terms of sound and connotation. However, we find that this misspelling of the word "quality" in registrant's mark serves to distinguish the two marks in terms of appearance and overall commercial impression. Registrant's mark is laudatory and descriptive notwithstanding its novel spelling, and we find that the scope of protection to which it is entitled is less than that which would be afforded to a more distinctive mark. Considering the marks in their entireties, and noting the weakness of the cited registered mark, we find that the marks are dissimilar and that the first *du Pont* factor weighs in applicant's favor.

We consider next the second *du Pont* factor i.e., the similarity or dissimilarity of the goods identified in

applicant's application and in the cited registration. It is not necessary that these goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods be related in some manner, or that the circumstances surrounding their use be such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

The Trademark Examining Attorney has made of record ten third-party registrations in which the identifications of goods include both applicant's goods, i.e., motor vehicle transmissions, and one or more of the automotive parts products identified in the cited registration, including "clutches." Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have

probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988). Based on this evidence, we find that the second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Because there are no restrictions or limitations in applicant's or registrant's identifications of goods, we also find that the respective goods are marketed in all normal trade channels for such goods and to all normal classes of purchasers for such goods. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Given the relationship between the goods, we find that the normal trade channels and classes of purchasers for applicant's and registrant's goods are overlapping; the goods would be marketed to, e.g., automotive mechanics (both professional and non-professional) and professional repair shops. We find, however, that these purchasers are likely to be somewhat sophisticated and careful in their purchasing of these goods, especially in their purchases of applicant's transmissions, which we presume to be fairly expensive items which would not be purchased on impulse. We find

that the third *du Pont* factor weighs in favor of a finding of likelihood of confusion, but that the fourth factor weighs in applicant's favor.

We note that the cited registered mark is registered on the Supplemental Register, and that it thus may be considered to be a weak, descriptive mark which is entitled to a narrower scope of protection than that which would be afforded to a mark which is more distinctive. *In re The Clorox Company*, *supra* at fn. 5. We note as well that the record includes three third-party registrations (attached by the Trademark Examining Attorney to the first Office action) of marks which include the word QUALITY in some form for automotive engine parts like those identified in the cited registration. This evidence further lessens the scope of protection to be afforded to the registered mark. Indeed, we find that the cited registered mark, due to its misspelling of the word "quality," is only slightly less laudatory than is applicant's mark. Thus, in this case and on this record, we find that the cited registered mark is not entitled to a scope of protection which is sufficiently broad to support a finding of likelihood of confusion.

Decision: The likelihood of confusion refusal under Trademark Act Section 2(d) is reversed, but the mere

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descriptiveness refusal under Trademark Act Section 2(e)(1)
is affirmed.